IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2467 OF 2006

Mr.Bakshish Abdul Gafoor Qureshi & Anr. ... Applicants.

V/s.

Jamila (Khatoon) Abdul Gafoor Qureshi
& Anr. ... Respondents.

Mr. Girish Kulkarni, for the Applicants.
Mr. Prakash Naik, for the Respondent No.1.
Mr. Rajesh More, A.P.P. for the State.

CORAM : A.S. OKA, J.
DATE : 01ST SEPTEMBER, 2006.

P.C. :

1. Rule. Shri Naik waives service for the first Respondent and learned A.P.P. waives service for the second Respondent. Taken up for hearing forthwith.

2. In this application under Section 482 of the Code of Criminal Procedure, 1973, a prayer is made for setting aside the order dated 15th April 2006 passed by the learned Chief Metropolitan Magistrate as well as the order dated 6th June 2006 passed by the learned Sessions Judge in Transfer Application filed by the present Applicant.

3. Briefly stated, the first Respondent has lodged a complaint against the Applicants before the Esplanade Court for offences under Section 467, 468, 120(B) of the Indian Penal Code allegedly committed by the Applicants. The said Case being CC No.368/P/2004 is pending in 37th Court, Esplanade, Mumbai. According to the case of the Applicants, there are six other cases in which the

Applicants are the accused persons and the said cases are pending before the 9th Court of the Metropolitan Magistrate, Bandra, Mumbai.

4. Initially, the Applicants applied for transfer of the said case pending in the Esplanade Court to the Court at Bandra by making an Application before the learned Chief Metropolitan Magistrate. The said Application was rejected. Thereafter, the Applicants moved a Transfer Application before the learned Sessions Judge, Mumbai which has been rejected by the learned Sessions Judge.

5. The learned Advocate appearing for the Applicants pointed out that the cases which are pending in the Court at Bandra arise out of the same family dispute amongst the Applicants, the first Respondent and other members of the family. He submitted that some of the evidence will be common in the said case as well as in the six cases which are pending in the Court at Bandra. He submitted that for the convenience of the parties, the case deserves to be transferred to the Court at Bandra as six other cases are pending in the same Court.

6. Mr. Naik appearing for the first Respondent submitted that the 9th Court of the learned Metroplitan Magistrate at Bandra is already overburdened with work and the cases which are pending in the said court are being postponed for one reason or the other. He submitted that the case

which is sought to be transferred has nothing to do with the other pending cases in the Court at Bandra. He submitted that the cases which are pending in the Court at Bandra relate to forgery of different set of documents and the same have nothing to do with the case pending in the Esplanade Court which is on the basis of the material collected by the Investigating Agency. He submitted that the only object of making this application is to delay the disposal of all the cases. He has also invited my attention to findings recorded by the learned Sessions Judge and submitted that no interference is called for.

7. On the last date, the learned Advocate appearing for the Applicants has tendered sworn undertaking of the Applicants on record. In the said undertaking, it is stated as under :-

(a) We will attend the matters on their respective dates and in the event of our absence we would be duly represented by our Advocates so that the matters can proceed in our absence.

(b) We also undertake not to dispute our identity in the event of our absence and take the advantage of the same in future in the present matters.

(c) We also undertake not to seek any adjournments on the

count of the absence and would proceed the trial on each and every date.

8. The learned Sessions Judge while rejecting the Application for Transfer made by the Applicants observed that the case which is pending with the Esplanade Court is on the basis of the agreement/settlement and the cases of forgery pending in the Court at Bandra are on the basis of allegations of forgery in respect of different set of documents. The Applicants are the sons of the first Respondent. It is also noted that the cases which are pending in the Bandra Court have been filed at the instance of one Shri Abdul Gafoor Qureshi, who is the nephew of the Applicant and who is the son of late Mohd. Abdul Qureshi.

9. It appears to me that the cases which are pending in the Esplanade Court as well as in Bandra Court arise out of family dispute pertaining to various properties. It is true that the subject matter of the offences involving in the cases may be different. But the fact remains that members of the same larger family are involved in all these cases either as the Complainants or accused as the case may be. Therefore, it will be in the interests of justice if all cases are transferred to one and the same Court which will facilitate convenience of both the sides as well as the Advocates appearing for the parties. The apprehension expressed by Mr. Naik appearing for the

first Respondent regarding further delay in the proceedings cannot be accepted as there is a solemn undertaking given by the Applicants which is taken on record. The undertaking of the Applicants is accepted.

10. Hence, I pass the following order :-

(a) The orders dated 15th April 2006 and 6th June 2006 are quashed and set aside.

(b) Case No.368/PW/2004 pending in the Court of the learned Metropolitan Magistrate, 37th Court at Esplanade, Mumbai is transferred to the Court of the learned Metropolitan Magistrate, 9th Court at Bandra for final disposal.

(c) The applicants are directed to abide by the undertaking which is taken on record of this Application.

(d) Considering the nature of cases and the old age of the first Respondent, it will be in the interest of justice if all pending cases are disposed of as expeditiously as possible. The learned Magistrate will keep this aspect in mind and will endeavour to decide all the cases mentioned in prayer (b) of this Applicantion as expeditiously as possible by giving necessary priority.

(e) Rule is partly made absolute in the above terms.

JUDGE